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ABSTRACT

This report was submitted in support of an amendment to the Indian Self-Determination and Education Assistance Act (ISDEAA) that will extend and expand the Self-Governance Demonstration Project. In late 1987, several Congressional committees investigated allegations of fraud and mismanagement in the administration of federal Indian programs. In response to charges of paternalism and ineffective bureaucracy, the Department of the Interior (without tribal consultation) proposed legislation to authorize block grant funding to tribes in return for a waiver of the federal trust responsibility. Several tribes proposed an alternative, the Self-Governance Demonstration Project, which became Title III of ISDEAA, and which reaffirmed the federal government's trust responsibility. Under the project, 20 participating tribes choose which Bureau of Indian Affairs (BIA) programs and activities they wish to administer themselves and receive the equivalent federal funds directly. The tribes are still eligible for direct services from programs they do not choose to manage. Funds from the Tribally Controlled Community College Assistance Act and Indian School Equalization formula cannot be included in the project. Since 1987, almost all progress in the project has been produced by participating tribes, with no support or cooperation from the BIA. Amendments to the project would extend it through 1996, expand the number of authorized participants to 30 tribes and Alaska village consortiums, increase funding, and make certain technical changes. A section-by-section analysis of the legislation is included. (SV)

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Calendar No. 301

102D CONGRESS *1st Session* | SENATE | REPORT 102-199

ED347028

AMENDING THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (25 U.S.C. 450 ET SEQ.)

NOVEMBER 1 (legislative day, OCTOBER 29), 1991.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1287]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1287) to amend the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et. seq.), and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 1287 is to extend and expand the Self-Governance Demonstration Project in order to allow an adequate demonstration period, to provide additional information to the Congress on whether it should make this Project available on a permanent basis, and to make various technical amendments to clarify Project administration.

BACKGROUND

The genesis of the Self-Governance Demonstration Project (Project) came about during a period of considerable concern and alarm over the administration of Indian programs and services by the various federal agencies. In October 1987 the United States Senate established a Special Committee on Investigations to look into allegations of fraud, corruption, and mismanagement in Indian affairs. In November 1987, the House Appropriations Subcommittee on Interior and Related Agencies held an oversight hearing on the administration of Federal Indian programs. In response to the charges of paternalism and a "bureaucracy ensnarled in red tape,"

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the Department of the Interior proposed legislation to authorize a consolidated funding program. Ironically, the Interior proposal was itself an example of the paternalism inherent in the Department's conduct of Indian programs. Unlike the Project, which was a tribal initiative, the Interior plan was developed in Washington without any tribal consultation.

The Interior proposal would have provided that for three years after enactment, participating tribes would receive either as a lump sum or in installments, an amount equal to at least the amount they would have received if they had entered into an Indian Self-Determination contract (except for Indian school equalization formula funds).

The proposal also provided that the Interior Department would be relieved of any obligation to provide services or benefits to the extent that the funding was provided for such services and benefits. It also provided that the tribes would not be obligated to provide the same services or benefits that the Secretary of the Interior would have provided.

In December 1987, after further discussions took place between the Department and tribes on Interior's proposal, a group of ten specified tribes were granted $1 million in the Interior and Related Agencies Appropriations Act for Fiscal Year 1988 for Project planning activities.

During this same period of time some of the tribes involved in planning for the Project met with former Senator Daniel J. Evans of Washington and Chairman Daniel K. Inouye and developed a substitute proposal entitled the "Tribal Self-Governance Research and Demonstration Project Act." The fundamental difference was that where the Interior proposal essentially proposed block grant funding for tribes in return for a waiver of the federal trust responsibility, the tribal alternative reaffirmed the federal government's trust responsibility and provided that those tribes which did participate in the Project would also be able to contract and be eligible for direct services of other programs.

After further consideration and hearings by the Select Committee on Indian Affairs and the House Committee on Interior and Insular Affairs, the Self-Governance Demonstration Project was authorized under Title III of the Indian Self-Determination and Education Assistance Act Amendments (Public Law 100-472) in 1988. Title III authorizes participating tribes, under an annual funding agreement with the Secretary of the Interior, to plan, consolidate, and administer programs, services and functions administered by the Bureau of Indian Affairs and to redesign programs, activities, functions or services and reallocate federal funds. The tribe can choose to contract for all or part of the services and programs provided by the Bureau of Indian Affairs.

Funds for the annual funding agreements are allocated out of agency, area, and central office accounts of the BIA to the tribe on the basis of what that tribe would have received in funds and services in the absence of the agreement. As Title III states:

> * * * funds from one or more programs, services, functions, or activities in an amount equal to that which the tribe would have been able to receive under contracts and

> grants under this Act (Public Law 93-638, as amended), including direct program costs and indirect costs, and for funds which are specifically related to the provision by the Secretary of services, and benefits to the tribe and its members. * * *

Funds from the Tribally Controlled Community College Assistance Act, Indian School Equalization formula, and the Flathead Irrigation Project cannot be included under a Self-Governance Compact.

Under the Project, tribes can only use federal funds to operate those programs which the Congress has previously authorized. A tribe is not required to operate an existing program, if it wishes to reallocate those funds from that program to another program that is also authorized by the Congress.

On July 18, 1991 the Select Committee on Indian Affairs held an oversight hearing on the implementation of the Project. At that time, participating Project tribes told the Committee that for the first two years of the Project, the Bureau of Indian Affairs provided almost no support either in terms of research or in providing appropriate financial data to the tribes. The lack of BIA cooperation had delayed effective implementation of the Project and had occurred in spite of explicit instructions to the Bureau from the Congress in the Appropriations Conference Report (C.R. 100-498, 100th Cong., 1st Sess.):

> The Managers direct the Bureau to analyze all budgets and functions at all levels of the Bureau, and to formulate a proposal for the equitable distribution of resources and service responsibilities between these demonstration tribal governments and the remaining tribal governments in multi-tribal agency and area offices. The Bureau should also prepare proposals for reduction or transfer of personnel and consolidation of program functions to accommodate the eventual transition.

Since 1987, almost all progress in the Project has been produced by the participating tribes. For example, one of the major accomplishments of the tribes has been the development of a prototype Compact of Self-Governance which delineates the legal and administrative relationship between the Department and tribes for the life of the Project. The Compact, in conjunction with the annual funding agreement, replaces all of the standard BIA contract documents.

Because of the lack of cooperation from the Bureau of Indian Affairs, four of the participating tribes met with Secretary Lujan in April 1990 and requested that a negotiator from outside of the Bureau of Indian Affairs be appointed for the negotiation of Compacts and the first annual funding agreements. Secretary Lujan appointed an independent negotiator and indicated his strong support for the Project.

Negotiations under the auspices of the independent negotiator validated the tribes complaints that no BIA efforts had gone into the Project. Notwithstanding the lack of timely and complete financial data, seven annual funding agreements were negotiated

and signed for Fiscal Year 1991. Following the appointment of the independent negotiator, the Department established the Self-Governance Council which oversees Project policy and is composed of senior Department officials.

At the direction of the Interior and Related Agencies Fiscal Year 1991 Appropriations Act, the Office of Self-Governance (Office) was established in the Office of the Secretary. The creation of this Office and its subsequent staffing in January 1991 has significantly improved the Department's performance and attitude toward the Project. The Office negotiates and coordinates all Department interaction with tribes relative to the Project.

The Committee supports the establishment and independence of the Office and it is the intent of the Act that the Department maintain the placement and independence of the Office from the Bureau of Indian Affairs for the duration of the Project. The Committee expects that the Office will insure that participating tribes will have timely and complete financial data available for planning and negotiations. Further, the Committee is aware that while there is strong support for the Project among senior policy makers at the Department, there continues to be resistance and misunderstanding about the Project throughout all levels of the Department, particularly at the Area and Agency levels. As one tribal witness stated: "The legislative intent is clear, but the BIA must be constantly reminded of the Title III provision." The Committee strongly encourages the Department to take the appropriate steps to educate Department staff on all aspects of the Project.

The Committee also directs the Department to proceed with the restructuring process for the Project as directed in the 1988 Appropriations Conference Report: "to prepare proposals for reduction or transfer of personnel and consolidation of program functions". The Committee is aware that the consultation process for determining how to reorganize the BIA has not been completed and that any future reorganization may affect decisions on how to best restructure the BIA for the Project. Nevertheless, the Committee expects the Bureau to proceed with restructuring to the maximum extent feasible.

The Committee is encouraged by the progress the Department has made in the implementation of the Project since the establishment of the Office of Self-Governance. Administration support for the Project was further demonstrated in President Bush's June 14, 1991 Indian policy statement: "Reaffirming the Government-to-Government Relationship Between the Federal Government and the Tribal Governments," which states in pertinent part:

> This is a partnership in which an Office of Self-Governance has been established in the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments.

Finally, the Committee wishes to commend the participating tribes for their persistence in making this Project a reality. That persistence no doubt comes from a common vision held by the

Project tribes; a vision which is perhaps best captured in a statement made by the Lummi tribe:

> The Self-Governance Demonstration Project is an historic effort to break a pattern of dominance and dependency. While some Federal programs in the past have allowed Indian Tribes to implement certain limited programs, Self-Governance offers the chance for us to assume total control of our economic, political, and social futures, and to demonstrate that we can accomplish what the BIA has not been willing or able to do in 120 years.

Extension of Time for Tribal Self-Governance Demonstration Project

The Project demonstration period is extended by three years through Fiscal Year 1996. Although the Project was authorized in 1988, the first seven annual funding agreements were not signed until Fiscal Year 1991. An additional 10 annual funding agreements have been negotiated for Fiscal Year 1992. The Project's original time frame would only allow 3 and 2 years respectively to explore and examine the implementation phase of the Project. Participating tribes testified that the process of implementation at the tribal level requires extensive transition adjustments and that more time will allow a better test of the Project.

Increase in Number of Tribes Participating in Project

The current number of authorized tribal participants would be increased from twenty to thirty. The increase is necessary in order to allow some tribes that are seriously considering participating in the Project the opportunity for participation. This increase should allow the Project to achieve a better geographic diversity than is now apparent in the Project. The Committee expects the Office to seek to include in the Project at least one tribe from each BIA area.

The Committee agrees with the Department's policy that regional tribes in Alaska, such as the Central Council of Tlingit and Haida Indian Tribes, and consortiums of tribes and villages are eligible in the Project as agents for their member tribes and communities rather than the more rigid alternative of limiting the program strictly to individual tribes. This policy is consistent with the longstanding practice where such regional tribes and consortium are authorized by communities, federally recognized tribes, and villages to contract under Public Law 93-638 for BIA programs and services. Such an option should only be possible when there is a clear statement of such an intent from the participating tribes, villages and communities. For purposes of the Project, each such consortium and regional tribe should be counted as one tribe. This determination of eligibility shall only apply with respect to Alaska and will have no effect on the Alaska Native Claims Settlement Act.

Extending the Project for a limited number of years and adding a limited number of additional tribes represents a policy determination by the Committee to proceed with the Project in a careful

and orderly manner. The support for the Project that has developed in the past several years has led some advocates to urge that the Project be made permanent immediately and opened up to all tribes. Several witnesses testified, however, that the Committee should allow the Project to complete its demonstration period in order that any permanent legislation can build on its strengths and that its weaknesses can be identified and corrected.

The Committee is aware that the original participating tribes have developed extensive Project materials, have been conducting Project education workshops, and are available to provide technical expertise on the Project itself. The Committee encourages the new Project tribes to utilize the resources and expertise made available by the original Project tribes.

Completion of Grants as a Precondition to Negotiation of Written Annual Funding Agreements

While there is some disagreement as to whether the original language in Title III required the completion of planning grants as a precondition to the negotiation of annual funding agreements, the bill clearly will require each new tribe participating in the Project to go through the planning process. During this planning phase each tribe would receive a planning grant to conduct budgetary and legal research, internal government planning and reorganization, if desired, and to develop a negotiations strategy. It is important for each tribe in the Project to have experience in all phases of the Project so that the Congress can evaluate whether the Project should be made available on a permanent basis.

Additional Funding for Self-Governance Planning and Negotiation Grants

$700,000 is authorized for planning and negotiation grants for the ten additional tribes. Each of the ten tribes would receive approximately $50,000 for planning and $20,000 for negotiation grants. The Committee emphasizes that the foregoing grant amounts are based on the historical averages of participating Project tribes and are not meant to be absolute limits for an interested tribe should they require more or less in grant funding. Several witnesses testified that the planning and negotiations grants were not effectively administered in the first phase of the Project by the BIA. The Committee directs the Office to expeditiously process these grants.

Technical Amendments

The Committee has adopted an amendment to the Project which clarifies that the activities, programs, services, and functions subject to the Project are expanded to cover all activities, programs, services, and functions of the Department of the Interior that are otherwise available to Indian or Indian tribes, and not simply those of the Bureau of Indian Affairs.

Where there is a question as to whether any particular activity, program, service, or function is available for inclusion in the Project, such as competitive grants, roads, or the Marijuana Eradi-

cation and Reconnaissance Team, it is the Committee's intention that such issues be resolved at the time of negotiation in favor of inclusion; provided, that a mechanism can be devised to effectuate such inclusion without violating the specific language of the various authorizing statutes or the injunction against adverse effects on other non-Project tribes. Where a program is within the administrative discretion of the Department, the Committee urges that the Department utilize its discretion to effectuate inclusion. It is important to note that the Project is a Demonstration Project. The broader the experiment the better the Congress will be able to determine whether the Project should be made available on a permanent basis.

The Committee has adopted an amendment which rescinds the statutory requirement that the Secretary approve contracts and payments to attorneys and other professionals for tribes that are participating in the Project. Project tribes assert that these Secretarial reviews are archaic and create significant paperwork and administrative delay. The Project provides a controlled opportunity to demonstrate tribal ability to operate without this particular review. Nothing in this section affects the requirements that management contracts under the National Indian Gaming Act require approval.

Participating tribes have recommended that the Committee delete the several statutory exclusions from the Project, i.e., Indian school equalization formula grants, Tribally Controlled Community Colleges Act, and the Flathead Irrigation Project. In order to determine whether such exclusions should be deleted, the Committee has required that the Secretary assess the effects of including such programs in the Project and report back to the Committee. The Committee expects the Office to be thoroughly involved in the preparation of this report.

Participatihg tribes recommended to the Committee that the Indian Health Service (IHS), as the second largest Indian Affairs agency, should begin to plan and prepare for inclusion in the Project. As noted earlier, the Committee has made a policy determination to proceed with the Project in a careful and orderly manner in order to develop the data and experience to create a potential framework for the future government-to-government relationship between the United States and Indian tribal governments. The IHS is the next logical step and therefore the Committee has directed the IHS to initiate planning and research activities. The Committee expects the IHS to adhere to the reporting deadline specified in the amendment. Just as the public commitment of the Secretary of the Interior and the Assistance Secretary for Indian Affairs to support the Project and to work directly with the participating tribes has been critical to the Project's success, the Committee expects the same level of support from the Secretary of Health and Human Services and the Director of the IHS.

Legislative History

S. 1287 was introduced on June 13, 1991 by Senator McCain and Senator Inouye and was referred to the Select Committee on Indian Affairs. The Committee held a hearing on July 18, 1991.

Committee Recommendations and Tabulation of Vote

In open business session on October 1, 1991, the Select Committee on Indian Affairs, by a unanimous vote of a quorum present, ordered the bill as amended reported with the recommendation that the Senate pass the bill as amended.

Section-by-Section Analysis

Section 1. Short Title.—This section sets forth the short title as the "Tribal Self-Governance Demonstration Project Act."

Section 2. Extension of time for Tribal Self-Governance Demonstration Project.—This section extends the original time period for the Tribal Self-Governance Demonstration Project from five years to eight years.

Section 3. Increase in number of Tribes participating in the Project.—This section expands the original limit on the number of participating Tribes in the Self-Governance Project from twenty tribes to thirty tribes.

Section 4. Completion of grants as a precondition to negotiation of written annual funding agreements.—This section requires that any tribe which elects to participate in the Tribal Self-Governance Project must first complete a planning grant before they are eligible to negotiate a compact of Self-Governance and the accompanying annual funding agreement.

Section 5. Additional Funding for Self-Governance Planning and Negotiation Grants.—This section provides authorization for appropriations to carry out the purposes of the bill.

Section 6. Technical Amendments.—This section makes various technical amendments to the original act for the purposes of defining and clarifying issues relating to the Department of the Interior's administration of the Self-Governance Project, and to provide the Congress with two separate studies on the feasibility of expanding the application of a Compact of Self-Governance to the Indian Health Service and to certain Interior programs currently excluded by law.

Executive Communications

The only communication received by the Committee from the Executive Branch with respect to S. 1287 was in the form of testimony presented by the Honorable Eddie F. Brown, Assistant Secretary—Indian Affairs, Department of the Interior, on July 18, 1991, which is set forth below:

Testimony of Dr. Eddie F. Brown, Assistant Secretary—Indian Affairs

I appreciate the opportunity to testify on S. 1287, the "Tribal Self-Governance Demonstration Project Act", which would amend Title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note). I would like to comment on the progress that Indian tribes and the Department have made in implementing the Self-Governance Demonstration Project (the Project). Allow me

first to discuss the Project in general and then address the specific provisions of the proposed amendments.

Since the founding of the United States, Federal policies toward American Indians have vacillated between separation and assimilation, and from conquering to protection. Over the last 110 years, Federal policy has gone from tribal termination with the Allotment Act of 1887 to the Indian Reorganization Act's renunciation of that policy in 1934 back to a policy of termination and assimilation in the 1950's.

In the last months of his Administration, President Johnson rejected the policy of termination and two years later President Nixon sent a milestone message to Congress that accepted the policy of Indian self-determination. In 1975, the Congress enacted the Indian Self-Determination and Education Assistance Act. In 1988, the Congress authorized the Self-Governance Demonstration Project in Title III of the Indian Self-Determination and Education Act Amendments (Public Law 93-638, 25 U.S.C. 450, et seq). President Reagan in 1983 reaffirmed the policy of Indian self-determination and emphasized a government-to-government relationship between Indian tribes and the Federal government.

President Bush, in a recently issued statement, reaffirmed the government-to-government relationship, saying: "This government-to-government relationship has been the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation".

He went on to say: "This is a partnership in which an Office of Self-Governance has been established within the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments."

The creation and implementation of the Self-Governance Demonstration Project has been an important step in Indian self-determination, in improving the government-to-government relationship, and in helping Indian tribes to develop independence.

The Project has become a good example of what can happen when Indian tribes, the Congress and the Administration cooperate to the fullest extent possible.

Tribal leaders and staff have exhibited statesman-like qualities in the development of this program. At their own expense, they have conducted research, held workshops and recommended numerous changes in the structure and implementation of current government programs. These actions most surely will affect many Indian tribes positively in the future.

The Congress has responded by authorizing the Project and then by funding tribal planning grants. In FY 1991, Congress provided $3 million to assist with tribal start-up costs and program adjustments funding, due to the indivisibility of some Bureau of Indian Affairs (BIA) resources.

Now congress is sponsoring amendments to Title III to extend the Project and require interested tribes to complete a planning process prior to entering a Self-Governance Agreement.

During FY 1990, the Administration negotiated seven self-governance funding agreements which resulted in 58 BIA programs totalling about $26.8 million being rolled into the seven annual funding agreements for FY 1991. This year, renegotiations have been completed on the original funding agreements for FY 1992 and negotiations are soon to start on another 10 funding agreements that will commence on January 1, 1992.

Last year, a Self-Governance Demonstration Project Council was formed. I chair this Council which includes the Deputy Commissioner—Bureau of Indian Affairs, the Counselor to the Secretary, the Solicitor and the Deputy Assistant Secretary—Indian Affairs. These individuals were selected to ensure that the highest level of Departmental attention is govern to the Project. A new Office of Self-Governance was created and a Director, Deputy Director and a staff of three are now working in that office.

Cooperative efforts by Tribal Governments, Congress and the Administration have brought the Project this far. It is my hope that this three-way partnership can continue for many years to come.

As I turn to the specifics of S. 1287, let me reiterate what Secretary Lujan said in May at the National Tribal Leaders Forum here in Washington—the Self-Governance Program is here to stay for those tribes who wish to participate. In that vein, the Department strongly supports the intent of S. 1287 to extend the Self-Governance Demonstration Project. We support extending the project for an additional three years and requiring tribes to successfully complete a planning process before entering into negotiations with the Department or a Self-Governance agreement.

The Self-Governance Demonstration Project represents a natural extension of the self-determination and government-to-government policies initiated over 20 years ago. For those tribes who desire it, self-governance agreements offer an opportunity for tribal governments to gain maximum discretion over the use of Federal resources. Developing this Demonstration project to its fullest potential remains one of the highest priorities of the Department.

We look forward to sharing with the committee the relative costs and benefits of the Project.

We have determined that S. 1287 is not affected by the Pay-As-You-Go (PAYGO) provision of the Budget Enforcement Act (BEA) of 1990, but is subject to the domestic discretionary funding caps mandated by the BEA.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1287, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 18, 1991.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1287, the Tribal Self-Governance Demonstration Project Act. Enactment of S. 1287 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1287.
2. Bill title: Tribal Self-Governance Demonstration Project Act.
3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs on October 1, 1991.
4. Bill purpose: S. 1287 would amend the Indian Self-Determination and Education Assistance Act to extend the tribal self-governance demonstration project for three years beyond the current expiration date of October 5, 1993. In addition, the bill would increase the number of tribes eligible for the demonstration project, provide funding for planning and negotiation grants for the additional tribes, and require tribes to enter into annual funding agreements to complete the self-governance planning grant process before participating in the project. The bill also would require the Secretary of the Interior and the Secretary of Health and Human Services to conduct studies regarding the feasibility of expanding the demonstration project to include additional programs.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Estimated authorization level	4.0	4.5	4.2	4.3	4.5
Less: Estimated current authorization	3.6	3.8	0	0	0
Net additional authorization	0.4	0.7	4.2	4.3	4.5
Estimated additional outlays	0.4	0.7	3.1	4.3	4.5

The costs of this bill fall within budget functions 300 and 450.

Basis of estimate: CBO assumes that the estimated authorization level would be appropriated for each fiscal year. Outlays are based on historical spending patterns for this program.

CBO estimates that extending the demonstration project for three additional years would result in costs of about $4 million annually for fiscal years 1994 through 1996. These costs would result from the continuation of funding for the Office of Self Governance within the Office of the Secretary of the Interior and the continued appropriation of about $3 million annually for self-governance tribal compacts.

CBO estimates that the remaining costs of S. 1287 would stem from the costs associated with expanding the number of tribes eligible for the project from 20 to 30, funding for planning and negotiation grants, and the costs of the required studies and reports.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of S. 1287 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Patricia A. Conroy.

11. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1287 will have minimal regulatory or paperwork impact.

Changes in Existing Law

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 100-472—October 5, 1988

AN ACT Entitled the "Indian Self-Determination Amendments of 1987"

* * * * * * *

TITLE III—TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT

"Sec. 301. The Secretary of the Interior shall, for a period not to exceed [five] *eight* years following enactment of this title, conduct a research and demonstration project to be known as the Tribal Self-Governance Project according to the provisions of this title.

"Sec. 302. (a) The Secretary shall select [twenty] *thirty* tribes to participate in the demonstration project, as follows:

"(1) a tribe that successfully completes a Self-Governance Planning Grant, authorized by Conference Report 100-498 to

accompany H.J. Res. 395, One Hundredth Congress, first session shall be selected to participate in the demonstration project; and

"(2) the Secretary shall select, in such a manner as to achieve geographic representation, the remaining tribal participants from the pool of qualified applicants. In order to be in the pool of qualified applicants—

"(A) the governing body of the tribe shall request participation in the demonstration project;

"(B) such tribe shall have operated two or more mature contracts; and

"(C) such tribe shall have demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by such tribe having no significant and material audit exceptions in the required annual audit of such tribe's self-determination contracts.

"SEC. 303. (a) The Secretary is directed to negotiate, and to enter into, an annual written funding agreement with the governing body of a participating tribal government [which—] *that successfully completes its Self-Governance Planning Grant; such annual written funding agreement—*

"(1) shall authorize the tribe to plan, conduct, consolidate, and administer programs, services and functions [authorized under] *of the Department of the Interior that are otherwise available to Indian Tribes or Indians, included but not limited to* the Act of April 16, 1934 (48 Stat. 596), as amended, and the Act of November 2, 1921 (42 Stat. 208);

"(2) subject to the terms of the written agreement authorized by this title, shall authorize the tribe to designate programs, activities, functions or services and to reallocate funds for such programs, activities, functions or services;

"(3) shall not include funds provided pursuant to the Tribally Controlled Community College Assistance Act (Public Law 95-471) for elementary and secondary schools under the Indian School Equalization Formula pursuant to title XI of the Education Amendments of 1978 (Public Law 95-561, as amended), or for either the Flathead Agency Irrigation Division or the Flathead Agency Power Division: *Provided,* That nothing in this section shall affect the contractability of such divisions under section 102 of this Act;

"(4) shall specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to this agreement;

"(5) shall specify the authority of the tribe and the Secretary, and the procedures to be used, to reallocate funds or modify budget allocations within any project year;

"(6) shall, except as provided in paragraphs (1) and (2), provide for payment by the Secretary to the tribe of funds from one or more programs, services, functions, or activities in an amount equal to that which the tribe would have been eligible to receive under contracts and grants under this Act, including direct program costs and indirect costs, and for any funds which are specifically related to the provision by the Secretary of services and benefits to the tribe and its members: *Provided,*

however, That funds for trust services to individual Indians are available under this written agreement only to the extent that the same services which would have been provided by the Secretary are provided to individual Indians by the tribe;

"(7) shall not allow the Secretary to waive, modify or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians which exists under treaties, Executive orders, and Acts of Congress;

"(8) shall allow for retrocession of programs or portions thereof pursuant to section 105(e) of this Act; and

"(9) shall be submitted by the Secretary ninety days in advance of the proposed effective date of the agreement to each tribe which is served by the agency which is serving the tribe which is a party to the funding agreement and to the Congress for reveiw by the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

"(b) For the year for which, and to the extent to which, funding is provided to a tribe pursuant to this title, such tribe—

"(1) shall not be entitled to contract with the Secretary for such funds under section 102, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

"(2) shall be responsible for the administration of programs, services and activities pursuant to agreements under this title.

"(c) At the request of the governing body of the tribe and under the terms of an agreement pursuant to subsection (a), the Secretary shall provide funding to such tribe to implement the agreement.

"(d) For the purpose of section 110 of this Act the term 'contract' shall also include agreements authorized by this title*; except that for the term of the authorized agreements under this title, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (25 U.S.C. 476), shall not apply to attorney and other professional contracts of participating Indian tribal governments operating under the provisions of this title.*

"(e) To the extent feasible, the Secretary shall interpret Federal laws and regulations in a manner that will facilitate the agreements authorized by this title

"(f) To the extent feasible, the Secretary shall interpret Federal laws and regulations in a manner that will facilitate the inclusion of activities, programs, services, and functions in the agreements authorized by this title.

"SEC. 304. The Secretary shall identify, in the President's annual budget request to the Congress, any funds proposed to be included in the Tribal Self-Governance Project. The use of funds pursuant to this title shall be subject to specific directives or limitations as may be included in applicable appropriations Acts.

"SEC. 305. The Secretary shall submit to the Congress a written report on July 1 and January 1 of each of the five years following the date of enactment of this title on the relative costs and benefits of the Tribal Self-Governance Project. Such report shall be based on mutually determined baseline measurements jointly developed

by the Secretary and participating tribes, and shall separately include the views of the tribes.

"SEC. 306. Nothing in this title shall be construed to limit or reduce in any way the services, contracts or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law and the provisions of section 110 of this Act shall be available to any tribe or Indian organization which alleges that a funding agreement is in violation of this section.

"SEC. 307. For the purpose of providing planning and negotiation grants to the ten tribes added by section 3 of the Tribal Self-Governance Demonstration Project Act to the number of tribes set forth by section 302 of this Act, there is authorized to be appropriated $700,000.

"SEC. 308. The Secretary of Health and Human Services, in consultation with the Secretary of the Interior and Indian tribal governments participating in the demonstration project under this title, shall conduct a study for the purpose of determining the feasibility of extending the demonstration project under this title to the activities, programs, functions, and services of the Indian Health Service. The Secretary shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act".

NEW LAW

The Secretary of the Interior shall conduct a study for the purpose of determining the feasibility of including in the demonstration project those programs and activities excluded under section 303(a)(3) of the Indian Self-Determination and Education Assistance Act. The Secretary of the Interior shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of this Act.

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